

VERMONT SUPREME COURT
CHITTENDEN UNIT

JUN 27 2017

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-212

JUNE TERM, 2017

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

JUN 27 2017

RECEIVED
BURLINGTON, VT

AUG - 3 2017

2:17-cv-138

CLERK'S OFFICE
U.S. DISTRICT COURT

City of Burlington v. Nicholas Schieldrop*

} APPEALED FROM:

} Superior Court, Chittenden Unit

} Criminal Division

} DOCKET NO. 36-7-16 Cnta

In the above-entitled cause, the Clerk will enter:

Defendant seeks permission to appeal to this Court from the criminal division's decision on appeal from the judicial bureau. The motion is denied insofar as the request for permission to appeal was not timely filed.

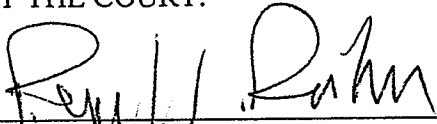
Requests for permission to appeal to this Court in judicial bureau cases are governed by Vermont Rule of Appellate Procedure 6(b) concerning discretionary appeals. See V.R.C.P. 80.6(i)(4). Under Rule 6(b), a "request for permission to appeal must be filed within 10 days of the date of the entry of the judgment or order to be appealed from, except that the running of the time for filing a request for permission is terminated to the extent provided, and for the grounds stated, in Rule 4."

In this case, the criminal division's decision was filed on March 27, 2017. On April 26, defendant filed a motion to extend time for an additional thirty days to file a notice of appeal. The court initially granted the request, but after receiving plaintiff's motion to reconsider, denied the request based on defendant's failure to file a timely motion for permission to appeal from the March 27 decision.


Defendant now asks this Court for permission to appeal the March 27 decision, arguing that Rule 6(b) refers to Rule 4 and that Rule 4(d) allows the superior court to extend time for filing a notice of appeal if the motion is filed within thirty days after the time prescribed by Rule 4(a) and the party shows excusable neglect or good cause. The rule defendant relies upon is unavailing for two reasons. First, Rule 6(b) refers generally to Rule 4, but Rule 4(d) is inapplicable to discretionary appeals in which permission to appeal must be filed within ten days because it deals with extensions of time to file notices of appeal beyond the normal thirty-day deadline. Second, defendant has failed to demonstrate excusable neglect or good cause for failing to file a request for permission to appeal within the prescribed time frame. Indeed, he candidly acknowledges that his counsel overlooked the rule establishing the ten-day deadline and "erroneously assumed that the matter would proceed as any alleged professional violation appeal would." See *In re Lund*, 2004 VT 55, ¶¶ 5-7, 177 Vt. 465 (concluding that superior court abused its discretion by granting motion to extend time to file notice of appeal based on excusable neglect where attorney failed to comply

with plain deadline in governing rule). Under these circumstances, the request for permission to appeal was not timely filed and thus is denied.


BY THE COURT:



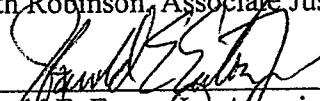
Paul L. Reiber, Chief Justice



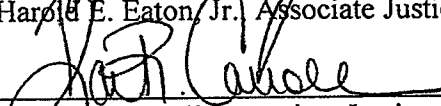
Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice